

SMB  
7/21/08

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

FILED

2008 JUL 21 AM 11:56

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Fernando HERNANDEZ-Montiel,

Defendant

) Magistrate Docket No.

) '08 MJ 2214

) COMPLAINT FOR VIOLATION OF:

BY: CNH

DEPUTY

) Title 8, U.S.C., Section 1326

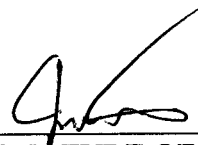
) Deported Alien Found in the

) United States

The undersigned complainant, being duly sworn, states:

On or about **July 19, 2008** within the Southern District of California, defendant, **Fernando HERNANDEZ-Montiel**, an alien, who previously had been excluded, deported and removed from the United States to **Mexico**, was found in the United States, without the Attorney General or his designated successor, the Secretary of the Department of Homeland Security (Title 6, United States Code, Sections 202(3) and (4), and 557), having expressly consented to the defendant's reapplication for admission into the United States; in violation of Title 8 United States Code, Section 1326.

And the complainant further states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.

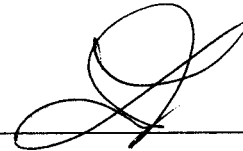


SIGNATURE OF COMPLAINANT

James Trombley

Senior Patrol Agent

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS **21st** DAY OF **JULY 2008**.



Leo S. Papas

UNITED STATES MAGISTRATE JUDGE

**CONTINUATION OF COMPLAINT:**  
**Fernando HERNANDEZ-Montiel**

**PROBABLE CAUSE STATEMENT**

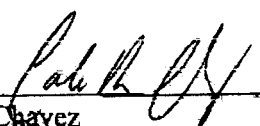
I declare under the penalty of perjury that the following statement is true and correct:

On July 19, 2008, Border Patrol Agent Z. Legler was performing line watch duties in the Imperial Beach Area of Operations. At approximately 5:00 A.M., the Remote Video Surveillance System (RVSS) Operator notified the agents of six individuals running north in an area known as the "Swamp". "The Swamp" is approximately two miles east of the San Ysidro, California Port of Entry and approximately three quarters of a mile north of the U.S./Mexico International border. This area is commonly used by undocumented aliens attempting to further their illegal entry into the United States. Due to the remoteness of this area, it is also frequently used by alien smugglers attempting to guide undocumented aliens into the United States afoot.

When Agent Legler arrived to the area, she encountered a group of five individuals trying to conceal themselves in some thick brush and observed one individual running westbound. Agent Legler secured the five individuals and continued to pursue the other individual. After a brief pursuit, Agent Legler encountered an individual attempting to conceal himself in some brush. Agent Legler escorted the individual back to the location of the other five individuals. Agent Legler then identified herself as a United States Border Patrol Agent in both the English and Spanish language and questioned each individual as to their citizenship. Each subject, including one individual later identified as the defendant **Fernando HERNANDEZ-Montiel**, freely admitted to being citizens and nationals of Mexico, illegally present in the United States and not in possession of any documents that would allow them to enter or remain in the United States legally. At approximately 5:45 A.M., Agent Legler placed all six individuals under arrest and transported them to the Imperial Beach Border Patrol Station for processing.

Routine record checks of the defendant revealed a criminal and immigration history. The defendant's record was determined by a comparison of his criminal record and the defendant's current fingerprint card. Official immigration records of the Department of Homeland Security revealed the defendant was previously deported to Mexico on June 2, 2008 through Calexico, California. These same records show that the defendant has not applied for permission from the Attorney General of the United States or his designated successor, the Secretary of the Department of Homeland Security, to return to the United States after being removed.

Executed on July 20, 2008 at 9:00 a.m.

  
\_\_\_\_\_  
Carlos R. Chavez  
Senior Patrol Agent

On the basis of the facts presented in the probable cause statement consisting of 1 page(s), I find probable cause to believe that the defendant named in this probable cause statement committed the offense on July 19, 2008, in violation of Title 8, United States Code, Section 1326.

  
\_\_\_\_\_  
Leo S. Papas  
United States Magistrate Judge

07/20/08 - 1134 Am  
Date/Time